No. ____

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives,

Plaintiffs-Appellees,

v.

PAT QUINN, Governor of the State of Illinois, in his official capacity,

Defendant-Appellant,

-and-

JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity,

Defendant.

Currently pending in the Appellate Court of Illinois, First District No. 13-3029

There on Appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division, No. 13 CH 17921, Hon. Neil H. Cohen, Judge Presiding

***** Electronically Filed *****

116704

10/02/2013

Supreme Court Clerk

****

MOTION BY GOVERNOR PAT QUINN FOR DIRECT APPEAL

Defendant-Appellant, Governor Pat Quinn, hereby moves, pursuant to Supreme Court Rule 302(b), for entry of an order directing that the pending appeal in this matter be transferred directly to the Supreme Court. This case arises out of Governor Quinn's line-item veto of appropriations for salaries of members of the General Assembly. The public interest requires an expeditious and conclusive determination by this Court of the important issues in this case regarding: (1) the ripeness of this proceeding for judicial determination in light of the fact that the plaintiffs and their colleagues in the General Assembly have not attempted to override the

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veto; and (2) should this case be or become ripe, whether the veto comported with the provision in article IV, section 11 of the Illinois Constitution prohibiting mid-term changes in the salaries of members of the General Assembly.

In support of his motion for direct appeal, Governor Quinn states as follows:

Nature and History of This Litigation

1. Plaintiffs-Appellees, John J. Cullerton and Michael J. Madigan, are the President of the Illinois Senate and the Speaker of the Illinois House of Representatives, respectively. On July 20, 2013, they commenced this action seeking declaratory and injunctive relief against Governor Quinn and Comptroller Judy Baar Topinka regarding the effect and constitutionality of Governor Quinn's line-item veto of appropriations for legislators' salaries contained in House Bill 214.

2. Count I of the plaintiffs' two-count complaint alleged that the Governor's line-item veto did not have the effect of eliminating the appropriations for the legislators' salaries because the Governor vetoed the line-item appropriations without also vetoing the totals in the appropriations bill. Count II alleged that the Governor's veto violated the provision in article IV, section 11 of the Illinois Constitution which provides that "changes in the salary of a member [of the General Assembly] shall not take effect during the term for which he has been elected."

3. The plaintiffs and Governor Quinn filed cross-motions for summary judgment on August 16, 2013, and August 30, 2013, respectively.

4. On September 26, 2013, the circuit court, the Honorable Neil H. Cohen presiding, entered an order: (a) granting Governor Quinn's motion for summary judgment on Count I of the complaint and denying the plaintiffs' motion for summary judgment on Count I; and (b) granting the plaintiffs' motion for summary judgment on Count II of the complaint and

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denying Governor Quinn's motion for summary judgment on Count II. A copy of the circuit court's memorandum opinion and order is included as Appendix A in the Supporting Record accompanying this motion.

5. Governor Quinn immediately filed a notice of appeal to the Appellate Court for the First District. A copy of the notice of appeal is included as Appendix B in the Supporting Record.

6. Governor Quinn now seeks direct review by this Court pursuant to Supreme Court Rule 302(b). That Rule implements article VI, section 4(b) of the Constitution, which requires direct review from judgments imposing the death penalty and states that "[t]he Supreme Court shall provide by rule for direct appeal in other cases." Rule 302(b) authorizes a direct appeal " in a case in which the public interest requires prompt adjudication by the Supreme Court . . . ." The following discussion explains why this is such a case.

Grounds for a Direct Appeal to This Court

7. This lawsuit features a struggle between the legislative and executive branches of our State government. The threshold question is at what point in such a struggle may one of the political branches call upon the judicial branch to decide the outcome. Ordinarily, when a veto rankles the General Assembly, the appropriate and constitutionally sanctioned response is to seek to override it. Here, the plaintiffs are asking the courts to intercede in this controversy before the General Assembly has decided whether to try to override the veto and, therefore, before it has become apparent whether the legislative and executive branches will reach an impasse. This raises an important ripeness issue for which prompt adjudication by this Court will serve the public interest.

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8. The circuit court's ruling on the constitutional claim asserted in Count II of the complaint would likewise present important issues warranting direct review if this Court were to conclude that it is necessary or appropriate to reach the merits of plaintiffs' lawsuit. The circuit court held that the Governor's authority, under article IV, section 9(d) of the Constitution, to "veto any item of appropriations" was trumped by the provision in article IV, section 11 prohibiting mid-term changes in legislators' salaries. The court based its ruling on the conclusion that article IV, section 11 prohibits mid-term decreases, as well as increases, in legislators' salaries. That interpretation conflicts with—and fails to address—prior decisions of this Court, relevant constitutional history, and the plaintiffs' own actions and pronouncements bearing on the meaning of article IV, section 11. By relying solely on a dictionary definition of the word "changes," the circuit court failed to consider:

a. Decisions by this Court recognizing that gubernatorial vetoes could lawfully apply to appropriations for legislators' salaries. *See Quinn v. Donnewald*, 107 Ill. 2d 179, 191, 483 N.E.2d 216, 222 (1985) (appropriations of legislative salaries established pursuant to the Compensation Review Act were subject to the Governor's veto power over appropriations contained in article IV, section 9(d) of the Constitution); *People ex rel. Millner v. Russel*, 311 Ill. 96, 99-100, 142 N.E. 537, 538 (1924) (line-item veto power applies to appropriations for the salaries of legislators and other state officers).

b. Statements by delegates at the 1970 Constitutional Convention, including the delegate who led the consideration at the Convention of what became article IV, section 11, explaining that that provision applied to mid-term

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increases in legislators' salaries. *See, e.g.*, Sixth Illinois Constitutional Convention, Record of Proceedings (July 15, 1970), p. 2705 (article IV, section 11 was intended to provide "protection against danger that . . . legislators . . . might run wild with their own salaries").

c. Repeated actions by the General Assembly evincing its understanding that article IV, section 11 only prohibits mid-term increases in their salaries. There have been at least seven instances—the last one coming just 16 days before this lawsuit was filed—in which the General Assembly has passed laws decreasing legislators' salaries. *See* P.A. 92-607; P.A. 96-45; P.A. 96-800; P.A. 96-958; P.A. 97-71; P.A. 97-718; and P.A. 98-30. These laws, several of which were sponsored by the plaintiffs, would be unconstitutional under the interpretation of article IV, section 11 espoused by the plaintiffs in this lawsuit.

d. The fact that article IV, section 11 does not prohibit all "changes" to legislators' salaries, but merely those that "take effect during the term for which [the legislators have] been elected." Placing "changes" in context is crucial, because the absence of any reason to prevent members of the General Assembly from immediately decreasing their own salaries underscores that this provision was only intended to prevent mid-term increases.

WHEREFORE, in light of the important ripeness and constitutional issues in this case warranting prompt adjudication by this Court, Governor Quinn respectfully requests entry of an order allowing his motion for direct appeal.

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Dated: October 2, 2013

Respectfully submitted,

GOVERNOR PAT QUINN

By: _____
One of His Attorneys

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CERTIFICATE OF SERVICE

I, Steven F. Pflaum, an attorney, hereby certify that I caused a copy of the foregoing **MOTION BY GOVERNOR PAT QUINN FOR DIRECT APPEAL** and the accompanying **SUPPORTING RECORD** and proposed **ORDER ON MOTION BY GOVERNOR PAT QUINN FOR DIRECT APPEAL** to be served upon:

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by email and first-class, postage prepaid U.S. Mail on October 2, 2013.

Steven F. Pflaum ***** **Electronically Filed** *****

NGEDOCS: 2120706.1

116704

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Supreme Court Clerk

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Plaintiffs-Appellees,

v.

PAT QUINN, Governor of the State of Illinois, in his official capacity,

Defendant-Appellant,

-and-

JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity,

Defendant.

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Judge Presiding

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NOTICE OF FILING

To: Justices and Counsel on the attached Certificate of Service

Please take notice that on October 2, 2013, I electronically served and filed, with the Clerk of the Illinois Supreme Court, the Motion by Governor Quinn for Direct Appeal and Supporting Record. I also electronically served and submitted, to the Clerk, a proposed order. As indicated in the attached Certificate of Service, copies of all of these materials have been served by United States mail on all of the recipients of this Notice, and also by email on all counsel.

/s/ Steven F. Pflaum
One of the Attorneys for Governor Quinn

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CERTIFICATE OF SERVICE

I, Steven F. Pflaum, an attorney, hereby certify that I caused a copy of the foregoing **NOTICE OF FILING** to be served upon:

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by email and first-class, postage prepaid U.S. Mail on October 2, 2013.

/s/ Steven F. Pflaum

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JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives, *Plaintiffs-Appellees*, v. PAT QUINN, Governor of the State of Illinois, in his official capacity, *Defendant-Appellant,* -and- JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity, *Defendant.*	Currently pending in the Appellate Court of Illinois, First District No. 13-3029 There on Appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division, No. 13 CH 17921, Hon. Neil H. Cohen, Judge Presiding

ORDER ON MOTION BY GOVERNOR PAT QUINN FOR DIRECT APPEAL

This matter coming before the Court on the motion of Defendant-Appellant, Governor Pat Quinn, for entry of an order directing that the pending appeal in this matter be transferred directly to the Supreme Court, the Court being duly advised of the premises, and good cause appearing therefor,

IT IS HEREBY ORDERED that the motion is allowed / denied.

Entered this ____ day of _____, 2013.

_____
Justice

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_____
Justice

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Justice

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Justice

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Justice

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Justice

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SUPPORTING RECORD

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Appendix A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JOHN J. CULLERTON, individually and in his capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his capacity as Speaker of the House of the Illinois House of Representatives,	)	
Plaintiffs,	)	
v.	)	**13 CH 17921**
PAT QUINN, Governor of the State of Illinois in his official capacity, and JUDY BARR TOPINKA, Comptroller of the State of Illinois, in her official capacity,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Plaintiffs John J. Cullerton and Michael J. Madigan have filed a Motion for Summary Judgment pursuant to 735 ILCS 5/2-1005. Defendant Governor Pat Quinn has also filed a Motion for Summary Judgment.

I. Background

Plaintiff John J. Cullerton, individually and in his official capacity as President of the Illinois Senate, and Michael J. Madigan, individually and in his official capacity as Speaker of the Illinois House of Representatives, have filed a Complaint for Declaratory Judgment and Injunctive Relief against Defendants Pat Quinn, in his official capacity as Governor of the State of Illinois, and Judy Baar Topinka, in her official capacity as Comptroller of the State of Illinois.

Plaintiffs allege that on July 10, 2013, Governor Quinn exercised his line-item veto power on an appropriations bill in an attempt to entirely eliminate General Assembly members' salaries in contravention of the Illinois Constitution. Plaintiffs also contend that Governor Quinn's line-item veto did not, in fact, accomplish an elimination of the legislators' salaries as Public Act 98-64 contains a lump-sum amount for payment of these salaries.

Comptroller Topinka has declined to issue current and future salary payments to the legislators based on the purported line-item veto. She has further stated her intention not to make such payments in the future in the absence of a court order.

Appendix A

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In Count I of their Complaint, Plaintiffs seek a declaration that Public Act 98-64 authorizes the payment of salaries to the members of the General Assembly and an order directing Comptroller Topinka to pay the full salaries due the members of the General Assembly. In Count II of their Complaint, Plaintiffs seek a declaration that Governor Quinn's line-item veto violates the Illinois Constitution and an order directing Comptroller Topinka to pay the full salaries due the members of the General Assembly.

II. Cross-Motions for Summary Judgment

The parties have filed cross-motions for summary judgment. "Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Continental Casualty Co. v. Law Offices of Melvin James Kaplan, 345 Ill. App. 3d 34, 37 (1st Dist. 2003). "When . . . parties file cross-motions for summary judgment, they concede the absence of a genuine issue of material fact and invite the court to decide the questions presented as a matter of law." Id.

A. *Ripeness of Plaintiffs' Claims*

Governor Quinn contends that Plaintiffs' claims are not ripe for decision and, therefore, summary judgment should be granted in his favor. "The basic rationale of the ripeness doctrine is to 'prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.'" Morr-Fitz, Inc. v. Blagojevich, 231 Ill. 2d 474, 490 (2008), quoting, Abbott Laboratories v. Gardner, 387 U.S. 136, 148-49. In evaluating whether a claim is ripe, "first, courts look at whether the issues are fit for judicial decision; and second, they look at any hardship to the parties that would result from withholding judicial consideration." Id. at 490.

The Governor contends that the legislative process has not yet been completed and, therefore, Plaintiffs' claims are not yet ripe. Section Article IV, §9 of the Illinois Constitution provides in relevant part that:

> (b) If the Governor does not approve the bill, he shall veto it by returning it with his objections to the house in which it originated. Any bill not so returned by the Governor within 60 calendar days after it is presented to him shall become law. If recess or adjournment of the General Assembly prevents the return of a bill, the bill and the Governor's objections shall be filed with the Secretary of State within such 60 calendar days. The Secretary of State shall return the bill and objections to the originating house promptly upon the next meeting of the same General Assembly at which the bill can be considered.
>
> * * *
>
> (d) The Governor may reduce or veto any item of appropriations in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be

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> returned to the house in which it originated and may become law in the same manner as a vetoed bill. An item reduced in amount shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill except that the required record vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount.

ILL. CONST. of 1970, art. IV §9.

The Governor issued his veto message on July 10, 2013. (Plaintiffs' MSJ at Ex. B). On that date, the General Assembly had already recessed for the summer. (Affidavit of Dian J. Koppang, ¶2). Under Article IV, Section 9(b), if the General Assembly is in recess when a vetoed bill is returned, the Governor's objections are considered upon the next meeting of the General Assembly. ILL. CONST. of 1970, art. IV §9(b). Therefore, the time-period for overriding the Governor's veto has yet to expire. This does not mean, however, that Plaintiffs' claims are not ripe.

The constitutionality issue raised by Count II of the Complaint is an issue fit for judicial decision. Count II alleges that the Governor violated Article IV, Section 11 of the Illinois Constitution by exercising his line-veto item in a manner which changed their salaries during their terms of office. ILL. CONST. OF 1970, art. IV §11. It is the duty of the courts to construe the Illinois Constitution and to decide whether the executive or legislative branches have disregarded its provisions in exercising their authority. Jorgensen v. Blagojevich, 211 Ill. 2d 286, 310-11 (2004).

While the General Assembly could still override Governor Quinn's veto, the dispute between the parties is not an abstract disagreement. Despite the fact that the legislative process has not been completed, Comptroller Topinka has already acted in accordance with the Governor's veto by not issuing paychecks to the General Assembly members. Whether the Governor's exercise of his line item veto was void *ab intitio* as a violation of Article IV, Section 11 is a question "essentially legal in nature" which is ripe for determination. Morr-Fitz, 231 Ill. 2d at 491.

Furthermore, should this court decline to consider Plaintiffs' claims on the basis of ripeness, General Assembly members would experience hardship. The General Assembly members have already missed two paychecks. This is concrete financial harm supporting the ripeness of Plaintiffs' claims. Alternate Fuels, Inc. v. Director of Illinois E.P.A., 215 Ill. 2d 219, 233 (2004)(where government action causes a plaintiff to suffer financial loss, the plaintiff has an immediate financial stake in the resolution of the action).

Should any question remain as to the ripeness of Plaintiffs' claim, that question is answered by the procedural history of Jorgensen. In Jorgensen, the General Assembly passed an appropriation for judicial salaries and the Governor reduced the salaries through his line-item veto. 211 Ill. 2d at 291. The Illinois Supreme Court issued two orders requiring the Comptroller to process the judicial salaries at the full amount of the appropriation despite the fact that the time for overriding the Governor's reduction veto had not expired. Id. at 291-92. The Jorgensen plaintiffs then filed suit, still within the time for overriding the Governor's veto, asserting the

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unconstitutionality of the Governor's reduction veto. Id. at 292-93. In deciding that the Governor's action was unconstitutional, the Illinois Supreme Court never raised any doubts as to the ripeness of the plaintiffs' claims.

Plaintiffs' claims are ripe for adjudication. The Governor is not entitled to summary judgment on this basis.

B. *Count I of the Complaint*

In Count I of the Complaint, Plaintiffs allege that Governor Quinn's exercise of his line-item veto resulted in a lump-sum appropriation for the legislators' salaries and a lump-sum appropriation for additional payments to party leaders. Plaintiffs seek a declaration that Public Act 98-64 authorizes the payment of salaries to Officers and Members of the General Assembly notwithstanding Governor Quinn's line-item veto of portions that legislation.

Section Article IV, §9 of the Illinois Constitution provides that:

> The Governor may reduce or veto any item of appropriations in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill. An item reduced in amount shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill except that the required record vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount.

ILL. CONST. of 1970, art. IV §9.

Governor Quinn vetoed the following text of Section 15 of House Bill 214:

For salaries of the 118 members of the House of Representatives at a base salary of $67,836.....	7,766,100
For salaries of the 59 members of the Senate at a base salary of $67,836.....	3,947,800
For the Speaker of the House, the President of the Senate and Minority Leaders of both Chambers.....	104,900
For the Majority Leader of the House.....	22,200
For the eleven assistant majority and minority leaders in the Senate.....	216,800
For the twelve assistant majority and minority leaders in the House.....	206,900
For the majority and minority caucus chairman in the Senate.....	39,500
For the majority and minority conference chairmen in the House.....	34,500

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For the two Deputy Majority and the two Deputy Minority leaders in the House.....	75,600
For chairmen and minority spokesmen of standing committees in the Senate except the Committee on Assignments.....	532,000
For chairmen and minority spokesmen of standing and select committees in the House.....	906,400

(Plaintiff's MSJ, Exs. A and B). Governor Quinn did not veto the following text of Section 15 of House Bill 214:

> The following named sums, or so much thereof as may be necessary, respectively, are appropriated to the State Comptroller to pay certain officers of the Legislative Branch of the State Government, at the various rates prescribed by law:
>
> * * *
>
> Officers and Members of the General Assembly
>
> * * *
>
Total	$11,713,900
For additional amounts, as prescribed by law, for party leaders in both chambers as follows:	
* * *	
	$2,138,800

(Plaintiff's MSJ, Exs. A and B).

Plaintiff's position is that the result of the Governor's line-item veto was a lump-sum appropriation for legislators' base salaries and another lump-sum appropriation for party leaders' additional compensation. The Governor contends that his purpose and intent – to eliminate the legislators' compensation in its entirety – was clear and the method he employed was consistent with past practice of both the Governor and his predecessors as well as the General Assembly's own practices in amending bills. The Governor further contends that authority supports his position.

Initially, it is abundantly clear that all the parties involved understood that the Governor's intent in exercising his line-item veto was the elimination of the legislators' base salaries and all additional compensation for party leaders. Therefore, Plaintiffs are asking this court to disregard the Governor's plain intent and construe the Governor's line-item veto as lump-sum appropriations for the legislator's base salaries and the party leaders' additional compensation.

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In People ex rel. State Board of Agriculture v. Brady, 277 Ill. 124, 125-26 (1917), the General Assembly passed an appropriations bill which contained numerous appropriations for the State Board of Agriculture ("the Board"). The Governor returned the appropriations bill to the General Assembly with his veto message expressly eliminating the majority of the items appropriated for the Board, but not vetoing the section total. Id. at 126. The Board sought a writ of mandamus directing the state auditor and the state treasurer to pay the full amount of the section total to the Board arguing that section total was the only distinct item of the appropriation and that the sub-items only signified the "direction" on how the total "should be used." Id. at 206.

In rejecting this argument, the Illinois Supreme Court stated that "the general appropriation of the total sum specifies no purpose or object" and without the specific items vetoed by the Governor, "would not be in compliance with the constitution, and to hold that [the total] was the only distinct item of the appropriation would be to nullify the power given by the constitution to the Governor to withhold his approval from distinct items." Id. at 131.

The Illinois Supreme Court further stated that "[t]he word 'item' is in common use and well understood as a separate entry in an account or schedule, or a separate particular in an enumeration of a total which is separate and distinct from the other particulars or entries." Id. The Governor vetoed particular items in the appropriations bill and those items did not become any part of the law. Id. at 132.

Nothing in Article IV, Section 9 of the Illinois Constitution requires that the Governor use a specific method to exercise his line-item veto. ILL. CONST. of 1970, art. IV, §9. Under Brady, by withholding his approval from the distinct items appropriating funds for the house members, senate members and party leaders, those distinct items have not become part of Public Act 98-64 in the absence of an override of the Governor's veto. The section totals "specif[y] no purpose or object," Brady, 277 Ill. at 131, and cannot constitute lump-sum appropriations.

The Governor is entitled to summary judgment on Count I of the Verified Complaint.

C. *Count II of the Complaint*

Plaintiffs allege that Governor Quinn's exercise of his line-item veto to eliminate their salaries was a violation of Article IV, Section 11 of the Illinois Constitution which provides that:

> A member shall receive a salary and allowances as provided by law, but changes in the salary of a member shall not take effect during the term for which he has been elected.

ILL. CONST. of 1970, art. IV, §11. Governor Quinn argues that the term "changes" refers only to increases in salaries and, therefore, there was no violation of Article IV, Section 11.

In construing a constitutional provision, a court relies on the common understanding of the voters who ratified the provision. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 13 (1996); Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 492 (1984). To determine that

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common understanding, a court looks to the common meaning of the words used. Committee for Educ. Rights, 174 Ill. 2d at 13. Where the meaning of the language at issue is plain and unambiguous, the language will be given effect without further construction. Id.; Maddux v. Blagojevich, 233 Ill. 2d 508, 523 (2009)("Where the words of the constitution are clear, explicit, and unambiguous, there is no need for a court to engage in construction).

Merriam Webster's Collegiate Dictionary defines "change" as "to make different in some particular: alter." MERRIAM WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2003). The New Oxford American Dictionary defines "change" as "to make or become different" and "the act or instance of making or becoming different." NEW OXFORD AMERICAN DICTIONARY (3rd ed. 2010). Therefore, under the common meaning of the word "changes," Article IV, Section 11 of the Illinois Constitution prohibits any alteration, whether an increase or a decrease, of a General Assembly member's salary during the term he or she was elected.

Governor Quinn invites this court to consider statements made during the 1970 Constitutional Convention in construing the word "changes."[1] This court declines to do so. It would only be proper to consider the debates of the 1970 Constitutional Convention if there was doubt as to the common meaning of "changes." Committee for Educ. Rights, 174 Ill. 2d at 13. There is no such doubt here. Id. at 20-21 (While statements made by delegates to the constitutional convention are useful for construing an ambiguous provision, such statements cannot transform unambiguous constitutional language).

Article IV, Section 9 of the Illinois Constitution grants the Governor authority to reduce items of appropriation. ILL. CONST. of 1970, art IV, §9. The Governor cannot, however, exercise this authority in a manner which violates another constitutional provision. Jorgensen, 211 Ill. 2d at 310-11. "The executive branch, no less than the legislative branch, is bound by the commands of our constitution." Id. at 310.

In exercising his line-item veto to change the salaries of the General Assembly members during the terms in which they were elected, the Governor violated Article IV, Section 11 of the Illinois Constitution. Therefore, the Governor's line-item veto of House Bill 214 was constitutionally void and of no effect. Jorgensen, 211 Ill. 2d at 311 ("If officials of the executive branch have exceeded their lawful authority, the courts have not hesitated and must not hesitate to say so.").

Plaintiffs are entitled to summary judgment on Count II of their Complaint.

D. Relief

Finally, Defendants argue that even if the Governor's line-item veto was void from the start, the funds that were the subject of that veto cannot be used to pay the General Assembly because that body has not yet acted upon those specific appropriations.

[1] Governor Quinn also cites to an interview given by Senator Cullerton to the State Journal-Register in 2012. Even if an ambiguity existed here, an interview given decades after the 1970 Constitutional Convention would provide no guidance in construing the provision.

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Jorgensen disposed of a similar argument that judges could not be paid their COLA because there was no specific appropriation for that purpose. 211 Ill. 2d at 311. The court relied upon Antle v. Tuchbreiter, 414 Ill. 571, 581 (1953), for the proposition that "'[w]here a statute categorically commands the performance of an act, so much money as is necessary to obey the command may be disbursed without any explicit appropriation.'" Id. at 314. And further added, "[I]f that is so with respect to statutorily mandated action, it is unquestionably so with respect to actions compelled by the constitution." Id.

Here, both the "statutorily mandated action" embodied by the commands of the General Assembly Compensation Act, 25 ILCS 115/1 *et seq.*, as well as the constitutional prohibition against changing the General Assembly's midterm salaries, compel this court to order the Comptroller to: (1) immediately pay the legislators' salaries which have been due, with interest, and (2) to pay the legislators' salaries which will become due during their present term of office.

III. Conclusion

1) The Governor is granted summary judgment on Count I of the Complaint.

2) Plaintiffs are granted summary judgment on Count II of the Complaint. A declaration is entered that the Governor's line-item veto of House Bill 214 violated Article IV, Section 11 of the Illinois Constitution and therefore, was void *ab initio* and of no legal effect.

3) Comptroller Topinka is ordered to pay the members and officers of the Illinois General Assembly in accordance with Public Act 98-64 and the General Assembly Compensation Act plus interest on any amounts that have been withheld.

4) The status date of October 7, 2013 at 10:30 a.m. stands.

Enter:_____

ENTERED
Judge Neil H. Cohen-2021
SEP 26 2013
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Judge Neil H. Cohen

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Appendix B

13-3029

**APPEAL TO THE APPELLATE COURT, FIRST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives, Plaintiffs-Appellees, v. PAT QUINN, Governor of the State of Illinois, in his official capacity. Defendant-Appellant, -and- JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity. Defendant.	Case No. 13 CH 17921 Hon. Neil H. Cohen

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CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
2013 SEP 26 PM 4:08
DOROTHY BROWN
CLERK
CIVIL APPEALS DIVISION

FILED
APPELLATE COURT 1ST DIST.
SEP 27 2013
STEVEN W. RAMID
CLERK

NOTICE OF APPEAL

Defendant-Appellant, Governor Pat Quinn, hereby appeals to the Appellate Court of Illinois, First District, pursuant to Supreme Court Rule 303, from the Order of the Circuit Court of Cook County dated September 26, 2013, entering final judgment in favor of the above-captioned Plaintiffs-Appellees.

Pursuant to this appeal, Governor Quinn seeks reversal of the circuit court's September 26, 2013, order (i) granting summary judgment in favor of Plaintiffs-Appellees, and denying Governor Quinn's cross motion for summary judgment, as to Count II of the Complaint,

Appendix B

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and (ii) ordering Comptroller Topinka to pay the members and officers of the Illinois General Assembly in accordance with Public Act 98-64 and the General Assembly Compensation Act.

DATE: September 26, 2013

Respectfully submitted,

GOVERNOR PAT QUINN

By: _____
One of His Attorneys

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CERTIFICATE OF SERVICE

I, Steven F. Pflaum, an attorney, hereby certify that I caused a copy of the foregoing **Notice of Appeal** to be served upon:

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by email and first-class, postage prepaid U.S. Mail, on September 26, 2013.

Steven F. Pflaum

NGEDOCS: 2116285.3

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Appendix C

No. 13-3029

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives, *Plaintiffs-Appellees*, v. PAT QUINN, Governor of the State of Illinois, in his official capacity, *Defendant-Appellant,* -and- JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity, *Defendant.*	Appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division, No. 13 CH 17921 The Hon. Neil H. Cohen Judge Presiding

NOTICE OF FILING OF NOTICE OF APPEAL

To: Counsel on the attached Certificate of Service

Please take notice that on October 2, 2013, we filed with the First District of the Illinois Appellate Court a copy of the attached Notice of Appeal by Governor Pat Quinn that was filed in the circuit court and served on you on September 26, 2013.

Steven F. Pflaum

Appendix C

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APPEAL TO THE APPELLATE COURT, FIRST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives, Plaintiffs-Appellees, v. PAT QUINN, Governor of the State of Illinois, in his official capacity. Defendant-Appellant, -and- JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity. Defendant.	Case No. 13 CH 17921 Hon. Neil H. Cohen

FILED-1
CIRCUIT COURT OF COOK COUNTY, ILLINOIS
2013 SEP 26 PM 4:08
CIVIL APPEALS DIVISION
DOROTHY BROWN
CLERK

NOTICE OF APPEAL

Defendant-Appellant, Governor Pat Quinn, hereby appeals to the Appellate Court of Illinois, First District, pursuant to Supreme Court Rule 303, from the Order of the Circuit Court of Cook County dated September 26, 2013, entering final judgment in favor of the above-captioned Plaintiffs-Appellees.

Pursuant to this appeal, Governor Quinn seeks reversal of the circuit court's September 26, 2013, order (i) granting summary judgment in favor of Plaintiffs-Appellees, and denying Governor Quinn's cross motion for summary judgment, as to Count II of the Complaint,

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and (ii) ordering Comptroller Topinka to pay the members and officers of the Illinois General Assembly in accordance with Public Act 98-64 and the General Assembly Compensation Act.

DATE: September 26, 2013

Respectfully submitted,

GOVERNOR PAT QUINN

By: _____
One of His Attorneys

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CERTIFICATE OF SERVICE

I, Steven F. Pflaum, an attorney, hereby certify that I caused a copy of the foregoing **Notice of Appeal** to be served upon:

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by email and first-class, postage prepaid U.S. Mail, on September 26, 2013.

Steven F. Pflaum

NGEDOCS: 2116285.3

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CERTIFICATE OF SERVICE

I, Steven F. Pflaum, an attorney, hereby certify that I caused a copy of the foregoing **NOTICE OF FILING OF NOTICE OF APPEAL** be served upon:

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by first-class, postage prepaid U.S. Mail on October 2, 2013

Steven F. Pflaum

NGEDOCS: 2120814.1

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Appendix D

No. ____

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives, *Plaintiffs-Appellees,* v. PAT QUINN, Governor of the State of Illinois, in his official capacity, *Defendant-Appellant,* -and- JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity, *Defendant.*	Currently pending in the Appellate Court of Illinois, First District No. 13-3029 There on Appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division, No. 13 CH 17921, Hon. Neil H. Cohen, Judge Presiding ***** **Electronically Filed** ***** 116704 10/02/2013 **Supreme Court Clerk**

****

AFFIDAVIT OF STEVEN F. PFLAUM

Steven F. Pflaum, being duly sworn, avers as follows:

1. I am a member of the law firm of Neal, Gerber & Eisenberg LLP. I make this affidavit, pursuant to Supreme Court Rule 328, to authenticate the contents of the Supporting Record in support of the Motion by Governor Pat Quinn for Direct Appeal. I have firsthand knowledge of, and would testify competently to, the matters stated below.

2. Included in the Supporting Record as Appendix A is a true and correct copy of the Memorandum Opinion and Order dated September 26, 2013, in *Cullerton v. Quinn*, Cook County Circuit Court no. 13 CH 17921 (the "Lawsuit").

Appendix D

3. Included in the Supporting Record as Appendix B is a true and correct copy of the Notice of Appeal in the Lawsuit that was filed on behalf of Governor Quinn in the circuit court on September 26, 2013. The Notice of Appeal also bears a file stamp indicating that it was filed in the Appellate Court, First District, on September 27, 2013.

4. Included in the Supporting Record as Appendix C is a true and correct copy of the Notice of Filing of Notice of Appeal in the Lawsuit that was filed on behalf of Governor Quinn in the Appellate Court, First District, on October 2, 2013.

FURTHER AFFIANT SAYETH NAUGHT.

Dated: October 2, 2013

Steven F. Pflaum

Subscribed and sworn to before me this
2nd day of October, 2013.

Notary Public

OFFICIAL SEAL
CYNTHIA FREE
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 7-7-2016

NGEDOCS: 2121025.2

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